UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

ARAMARK SCHOOL SERVICES, INC.[1]

Employer

and Case No. GR-7-RC-22114

MICHIGAN COUNCIL 25, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioner

and

MICHIGAN EDUCATION ASSOCIATION/ NATIONAL EDUCATION ASSOCIATION [MEA/NEA][2]

Intervenor

APPEARANCES:

Richard A. Buntele, Attorney, of Livonia, Michigan, for the Employer.
Eric I. Frankie, Attorney, of Detroit, Michigan, for the Petitioner.
J. Matthew Serra, Attorney, of Okemos, Michigan, for the Intervenor.

DECISION AND ORDER

Upon a petition duly filed under Section 9(a) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

[1] The name of the Employer appears as amended at the hearing.
[2] The names of the Petitioner and Intervenor appear as corrected.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[3] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer.[4]

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The Employer provides food, beverage, and catering services for various school districts throughout the United States, including the Benton Harbor, Michigan school district. The Petitioner seeks to represent approximately 85 food service employees presently employed by the Employer in the Benton Harbor school district.[5] The Employer and the Intervenor contend that the petition is premature as the Intervenor has not had a reasonable period of time during which to bargain with the Employer as a successor to the school district, which had previously employed the unit employees. The Petitioner contends that the Employer and Intervenor have had a reasonable period of time to bargain and that its petition should not be subject to the successorship bar doctrine.

Since about 1980, the Employer has contracted with the Benton Harbor school district for the provision of managerial services for the food service operations at school cafeterias. At a Benton Harbor school board budget meeting held on June 27, 2001, the school board voted to privatize the entire food services operations, effective August 6, 2001. At the time, there were approximately 215 service and maintenance employees, including approximately 85 who were food service employees, employed by the Benton Harbor school district and represented by the Benton Harbor Custodial/Maintenance, Bus

[3] The parties filed briefs, which were carefully considered.

[4] The Petitioner's challenge to the Intervenor's status as a labor organization is rejected as the record amply demonstrates that the Intervenor exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, and conditions of work, and that employees participate in the Intervenor's functions.

[5] The parties stipulated to the following appropriate unit:

> All employes employed as food service employees, including cooks, food servers, ticket takers, and food transportation drivers; **but excluding** all temporary employees, substitute employees, all other employees of the Employer, guards and supervisors as defined in the Act.

Drivers, Food Services, Security Officers and Hall Monitors Service Employees Association, MEA/NEA. The employees were covered by a collective bargaining agreement effective from October 1, 1998 to September 30, 2001.

On June 28,[6] the Benton Harbor school district awarded a contract to the Employer to provide food services at school cafeterias. By letter dated August 1, School District Superintendent Renee Williams informed Employer Regional Director Louise Eliason that it was the school district's intent that the Employer was to employ all food service employees and continue their wage rates in effect at the time of privatization for the upcoming school year. By letter dated August 3, the Employer informed the Intervenor that it would recognize it as the exclusive collective bargaining representative of the food service employees but would not assume the existing collective bargaining agreement and instead intended to negotiate a new collective bargaining agreement covering food service employees.

On August 3, the school district terminated all food service employees and on August 6 the Employer met with the food service employees and provided them with job applications and other employment-related forms. The Employer rehired all of the school district food service employees, except for about two who did not desire employment. The food service employees continue to perform the same job duties at the same location for the Employer that were previously performed for the school district.

Soon after the Intervenor received the letter granting voluntary recognition, arrangements were made for an initial bargaining session. The Employer and Intervenor met for bargaining on August 23, September 11, September 19, and October 2. The parties were scheduled to meet again on October 30. However, due to a mutual scheduling conflict that session was rescheduled to December 4, after the close of the hearing herein. Each bargaining session lasted approximately four to five hours. At the August 23 bargaining session, the parties exchanged initial proposals and negotiated a short-term interim agreement as a "stop-gap" measure to ensure continuing wage rates and health insurance coverage for the food service employees. The bargaining sessions resulted in the parties' reaching tentative agreements on the following issues: recognition; dues checkoff; bargaining unit definition; union representation; non-discrimination; grievance procedure; seniority; layoff and recall; management rights; uniforms; posting and bidding; no-strike, no-lockout; leave of absence; short term disability; zipper clause; past practice clause; and an alcohol and drug policy. The items that remain outstanding are economic in nature such as wages, pensions, and health insurance.

On November 13, the Benton Harbor school board voted to ratify a wage re-opener agreement reached with the Intervenor for a retroactive three percent wage increase for all service and maintenance employees in the school district, including the

[6] All dates are 2001 unless otherwise noted.

food service employees, for the period from October 1, 2000 through the contract expiration date on September 30, 2001. The Employer and Intervenor assert that the passage of the retroactive wage increase, to be implemented by the Employer as part of its commitment to the school board, allows them an opportunity to now conclude the economic portion of their bargaining for a new collective bargaining agreement.

In order to balance the sometimes competing interests of employee freedom of choice and the necessity to promote sound and stable labor-management relations by encouraging the practice and procedure of collective bargaining, the Board holds that the "reasonable time" standard for bargaining is to be used when a successor recognizes an incumbent union but does not adopt the predecessor's collective bargaining agreement. "[T]he union is entitled to a reasonable period of bargaining without challenge to its majority status through a decertification effort, an employer petition, or a rival petition." ***St. Elizabeth Manor, Inc.***, 329 NLRB No. 36, slip op. at 4 (Sept. 30, 1999). As in the period after an employer has voluntarily recognized a union, the Board holds that, when there is a successorship, both parties are in "a stressful transitional period" because employees "have not had an opportunity to learn if the incumbent will be effective with the successor" and "anxiety about their status under the successor may lead to employee disaffection before the union has the opportunity to demonstrate its continued effectiveness." Id. at 3.

The Board's test for determining what is a reasonable period of time focuses on what has transpired during the time period under scrutiny rather than just the length of time that has elapsed. The Board considers various factors including whether the parties are bargaining for a first contract; whether the employer is engaged in meaningful good-faith negotiations over a substantial period of time; and whether an impasse in negotiations has been reached. ***MGM Grand Hotel***, 329 NLRB No. 50, slip. op. at 3 (Sept. 30, 1999); ***King Soopers, Inc***., 295 NLRB 35, 37 (1989). The Board reviews whether the parties were making sufficient progress to warrant scheduling another session at the time that the petition was filed, whether proposals in writing were exchanged, and whether there was "substantial, gratifying momentum towards an agreement." ***Shangri-La Health Care Center***, 288 NLRB 334, 338 (1988). The Board will not allow a petition to disrupt good-faith bargaining and negate fruitful negotiations where the parties' efforts are on the verge of reaching finality. ***Ford Center for Performing Arts***, 328 NLRB No. 1 (1998); ***N.J. MacDonald & Sons, Inc.,*** 155 NLRB 67 (1965).

In applying this multifactor standard, the Board has found a reasonable bargaining period to encompass as few as 4 months and as many as 14 months of bargaining. ***Caterair International***, 322 NLRB 64, 68 (1996); ***Masada Communications***, 293 NLRB 931 (1989). By emphasizing that the duration of insulated bargaining depends primarily on what transpired during bargaining, the policy encourages parties to attend to the bargaining process, not to the calendar. On the other hand, the possibility that a

reasonable bargaining period may be met with only a few months of good-faith bargaining lessens the limiting effect of this remedy on employee free choice. ***Caterair, supra*** at 68 (1996).

In the instant case, during the course of four months of negotiations, the Employer and Intervenor have made substantial progress. Virtually all non-economic items have been resolved between the parties, and only a few economic items remain to be negotiated. Throughout the course of negotiations, the presence of a mediator has been unnecessary and there has been no hint of impasse or strike action by the Intervenor. Future bargaining sessions have been scheduled, and the Employer believes the parties are "awfully close to agreement" now that the Benton Harbor school board has decided upon the implementation of a retroactive wage increase covering unit employees. In the Employer's estimation, the parties should be able to come to a final agreement in the next one or two bargaining sessions. Under these circumstances, the instant petition should not be allowed to disrupt good-faith bargaining and negate fruitful negotiations that are on the verge of reaching finality.

The Petitioner argues that the parties could have commenced their negotiations as early as the beginning of July, following the June 27 budget meeting where the Intervenor learned of the school board's decision to privatize the school district's food services. However, it was not unreasonable for the Intervenor to wait until the Employer actually took over food service operations, had hired the school district's food service employees, and been granted recognition before arranging an initial bargaining session.

The Petitioner also argues that the following factors demonstrate the parties are not close to reaching a final agreement: (1) the difficult and protracted negotiations between the school board and the Intervenor regarding a wage re-opener; (2) the unfair labor practice charge filed by the Intervenor against the school district with the Michigan Employment Relations Commission contesting the privatization action; and (3) the failure of the Intervenor to finalize the charter of a new local union as a servicing agent for the food service employees. However, I find these arguments to be irrelevant as the focus is properly placed on the negotiations taking place between the Employer and Intervenor, not the relationship between the Intervenor and the school district. Any delay in the Intervenor's chartering of a new local means little in the context of the substantial progress that the parties have made in collective bargaining negotiations.

Consequently, based on all of the evidence as summarized above, I find that a reasonable period of time for bargaining has not occurred, and that the instant petition is barred.

IT IS ORDERED , that the petition is dismissed.[7]

Dated at Detroit, Michigan, this 10th day of December, 2001.

(SEAL)

/s/ William C. Schaub, Jr.
William C. Schaub, Jr., Regional Director
National Labor Relations Board, Region 7
Room 300, Patrick V. McNamara Federal Bldg.
477 Michigan Avenue
Detroit MI 48226

347-4050-5000
347-4050-5025

[7] Under the provisions of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the **National Labor Relations Board, addressed to the Executive Secretary, Franklin Court Bldg., 1099 14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by December 26, 2001.